Internal Revenue Service

memorandum

TL-N-199-01
AMHARBUTTE

date: March 13, 2001

to: Joyce Schulte, LMSB Team Manager, Group 1416
Internal Revenue Service,
Denver, Colorado

from: Alice M. Harbutte, Attorney
LMSB Counsel Area 4, Denver, Colorado

subject: [redacted]
[redacted] Taxable Year

This memorandum modifies the advice we provided on January 22, 2001, and is a supplemental response to your request for an advisory opinion dated January 4, 2001, concerning the proper wording to include in a Notice of Final Partnership Administrative Adjustment to be issued to [redacted] for the partnership's [redacted] taxable year. We recommend that the FPAA language read as follows:

> It has been determined that the proper fair market value of the partnership assets, for purposes of I.R.C. § 708 and for determining any gain under I.R.C. § 367, with respect to the transfer of the partnership interests by the partners in the [redacted] partnership, is $_____, on the date of such transfer.

If you have any questions concerning this memorandum, please contact Attorney Alice M. Harbutte at (303) 844-2214 ext. 256.

/s/

ALICE M. HARBUTTE
Attorney

Internal Revenue Service

memorandum

TL-N-199-01
AMHARBUTTE

date: JAN 22 2001

to: Joyce Schulte, LMSB Team Manager, Group 1416
Internal Revenue Service,
Denver, Colorado

from: Alice M. Harbutte, Attorney
LMSB Counsel Area 4, Denver, Colorado

subject: [redacted]
[redacted] Taxable Year

This memorandum is in response to your request for an advisory opinion dated January 4, 2001, concerning the proper wording to include in a Notice of Final Partnership Administrative Adjustment to be issued to [redacted] for the partnership's [redacted] taxable year.

ISSUE

1. What is the proper language to use in a Notice of Final Partnership Administrative Adjustment ("FPAA") to be issued to the [redacted] ("the Partnership") for the [redacted] taxable year in order to properly determine an increase in the value of the assets that were used to determine the gain reported by each partner of the Partnership under I.R.C. § 367(d), which gain was reported in accordance with I.R.C. § 367(a)(4), as a result of the transfer of partnership interests on [redacted], to two foreign partnerships, [redacted] and [redacted].

CONCLUSION

1. We recommend that in the FPAA to be issued to the Partnership you use the following language to determine an increase in value of the assets. This language should be placed in the "remarks" section of the Form 4605-A, "Examination Changes, Partnerships, Fiduciaries, Small Business Corporations and Domestic International Sales Corporation," which accompanies the FPAA. As no items that are reported on the partnership tax return are being adjusted the remainder of the Form 4605-A should show no adjustments.

It has been determined that the proper fair market value of the partnership assets, for purposes of determining any gain under I.R.C. § 367, with respect to the transfer of the partnership interests by the partners in the [redacted] partnership, is $_____, on the date of such transfer, rather than the value that was used by each partner in reporting gain under I.R.C. § 367, as reflected in the Forms 926, "Return by a U.S. Transferor of Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership," filed with the Service by each partner with respect to the transfer of the partnership interests as disclosed on the Forms 926.

FACTS

By Field Service Advice ("FSA") dated June 18, 1999, our office advised you that I.R.C. § 367 applied to the transfer of partnership interests of the Partnership which took place on [redacted]. The facts set forth in the June 18, 1999, FSA are incorporated herein by reference. A copy of the June 18, 1999, FSA is attached as Exhibit A. As a result of the [redacted], transfer, each individual partner in the Partnership filed forms 926 and also reported gain at the partner level under I.R.C. § 367(d) as required by I.R.C. § 367(a)(4). In the Field Service advice dated June 18, 1999, we advised you that the gain reported pursuant to I.R.C. §§ 367(a)(4) and 367(d) was a nonpartnership item, but that valuation of the partnership assets could be a partnership item.

In a subsequent Field Service Advice issued September 12, 2000, our office advised you that the determination of the proper value of the partnership assets that were used to determine the amount of gain each partner was to report, pursuant to I.R.C. §§ 367(a)(4) and 367(d), was a partnership item. The facts set forth in the September 12, 2000, FSA are incorporated herein by reference. A copy of the September 12, 2000, FSA is attached as Exhibit B. As a result of these two Field Service Advice memorandums, our office recommended to you that, in the event no agreement was reached with the taxpayer concerning the valuation issue and the amount of gain required to be reported under I.R.C. § 367 and it became necessary to make a determination as to the proper value of the partnership assets to be used by each partner in calculating the gain to report under I.R.C. § 367, that such determination should be set forth in an FPAA to be issued to the Partnership for its [redacted] taxable year.

The examination division has stated that it expects a final valuation report to be completed during [redacted]. The

valuation report is expected to conclude that the value of the Partnership assets, which were the subject of the [redacted], transfer, was significantly higher than reported by the partners on Forms 926. As a result, the Service expects to make a determination that there is an increase in the value of the assets of the Partnership. Furthermore, the Service will determine that additional gain will be due from the partners of the Partnership under I.R.C. § 367(d). The determination of additional gain under I.R.C. § 367(d) will be made at the partner level while the determination that there is an increase in value of the Partnerships assets will be made at the partnership level. Your question concerns the proper wording to use in the FPAA in order to determine the increase in value of partnership assets.

DISCUSSION

In the September 12, 2000, FSA we advised you that the value of partnership assets was a partnership item under I.R.C. § 6231(a)(3). Determinations concerning partnership items are to be made at the partnership level. Thus, in the event no settlement is reached with the Partnership concerning the proper value of the assets, relating to the [redacted], transfer, we recommend that the Service make determination, in accordance with the final valuation appraisal, that the value of the assets used by the partners to calculate and report gain under I.R.C. § 367 was incorrect. This determination state the correct value and should be set forth in an FPAA to be issued to the Partnership for its [redacted] taxable year. We recommend that you use the following language to make this determination:

> It has been determined that the proper fair market value of the partnership assets, for purposes of determining any gain under I.R.C. § 367, with respect to the transfer of the partnership interests by the partners in the [redacted] partnership, is $, on the date of such transfer, [redacted]

This language should be placed in the "remarks" section of the Form 4605-A, "Examination Changes, Partnerships, Fiduciaries, Small Business Corporations and Domestic International Sales Corporation," which accompanies the FPAA. As no items that are

reported on the partnership tax return are being adjusted, the remainder of the Form 4605-A should show no adjustments.

If you have any questions concerning this memorandum, please contact Attorney Alice M. Harbutte at (303) 844-2214 ext. 256.

Alice M. Harbutte

ALICE M. HARBUTTE
Attorney